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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-18-0021
PETITION TO ADOPT)	
RULES OF SMALL CLAIMS)	Objection to Some of the
PROCEDURE & MODIFY RULE)	Proposed Small Claims Rules
101(b), JUSTICE COURT RULES)	
OF CIVIL PROCEDURE)	

BACKGROUND

The author of this pleading is a Justice of the Peace in Maricopa County. He has served on three rule writing committees and on jury instruction committees. He therefore appreciates the level of effort and compromise that goes into producing the type of work product that has been completed; but he has significant and serious concerns about some of what has been proposed in the petition, especially if the rationale for the proposed radical changes is merely to meet somewhat recently created goals concerning time standards.

Establishing a set of court rules for small claims cases is appropriate because it would allow self-represented litigants essentially to have a single point of reference for what will happen when they appear in court. However, some of the proposed rules are extremely problematic.

I.

THE MANDATORY SCHEDULING REQUIREMENTS VIOLATE RECOGNIZED CASE FLOW MANAGEMENT PRACTICES AND IN MANY CASES WILL GENERATE FORESEEABLE FRUSTRATION

I admit that I micromanage how cases are set and are scheduled in my court. I often use the line, “It is one thing to have a bad day, it is quite another to actually schedule one.” Such a practice is sound if for no other reason than it attempts to avoid wasting people’s time.

Effective case flow management requires an initial acknowledgment that every court event consumes resources associated with time.¹ These include: (1) the time used by court staff to schedule the hearing, (2) the time used by the parties to prepare for the hearing, (3) the time used for the parties and any witnesses to travel to the court, (4) the time associated with missed work for the parties and any witnesses, including those who are paid by the public, and (5) the time used for the actual hearing by the court, by the parties, and by any witnesses. With time and other factors in mind, courts should develop and should enforce case flow procedures and deadlines.

¹ Course Materials, *Effective Case Flow Management*, The National Judicial College, Reno, Nevada (Jul. 17 – 20, 2006).

There are three components to effective case flow management.² First, someone (usually a judicial officer) must create a schedule with meaningful events. Second, someone (again usually a judicial officer) must manage the time between those events. This scheduled time between events must be long enough to *allow* preparation but short enough to *encourage* preparation. Third, there must be certainty that events will occur as scheduled and that deadlines will be enforced. This third standard is sometimes known as trial date certainty.

The National Center for State Courts has developed metrics for trial court performance. One of those measures is Trial Date Certainty.³ It measures the number of times cases that go to trial are set for trial. The rationale behind this standard is that a court's ability to hold trials on the first scheduled trial date is an indication of timely case disposition.⁴

Unfortunately, the proposed small claims rules mandate procedures that conflict with all of these case flow management goals. Rather than trial date certainty, future small claims plaintiffs would be required to appear and to guess what could happen.

² *Id.*

³ National Center for State Courts, *CourTools, Trial Court Performance Measures, Trial Date Certainty*, (Feb. 28, 2018), http://www.courttools.org/~media/Microsites/Files/CourTools/courttools_Trial_measure5_Trial_Date_Certainty.ashx

⁴ *Id.*

The proposed rules require the court to set a small claims hearing date before the summons and complaint are served.⁵ A plaintiff that does not properly or timely serve the summons and complaint, within 20 days, is required to “appear in court” and to request a new hearing date, which again will be set before the lawsuit is served and without knowing whether an answer will even be filed.⁶ Rather than allowing a plaintiff to file a motion requesting additional time to serve the defendant, the proposed rules require a court appearance in order to request more time.⁷

Under the new rules, a court that schedules small claims hearings at 30 minute intervals may have a period where there are hours of cases where only one side is appearing. Making parties take off work and appear just to see if the other side is going to show up is a system that will waste everyone’s time. However, the alternative is even worse.

A court could try to set three cases every 30 minutes; but such a system would quickly fail if both sides to two cases appear for the 8:30 a.m. slot and both sides to two cases appear for the 9:00 a.m. slot. At this point, the court calendar becomes a 1970s doctor’s office where your appointment was really only a time to appear to wait in a line.

⁵ The “court will set a hearing date when the plaintiff files a complaint.” Proposed ARSCP 7(a).

⁶ Proposed ARSCP 7(e).

⁷ *Id.*

While litigants will be upset with such scheduled inefficiencies; our volunteer hearing officers will not tolerate them. The vast majority of the Justice Courts in Maricopa County double calendar their small claims cases. A Justice of the Peace has the option of hearing cases in the courtroom while a hearing officer is hearing small claims cases in a hearing room down the hall. If these proposed rules are mandated, my best guess is that nearly every volunteer small claims hearing officer would quit.

II.

WHILE SIMPLIFIED PLEADINGS ARE APPROPRIATE, ELIMINATING ANSWERS AND THE ABILITY TO AMEND COMPLAINTS WILL FORCE LITIGANTS TO PROCEED WITH INCOMPLETE INFORMATION ON INFLEXIBLE ALLEGATIONS

The proposed rules would prohibit the plaintiff from amending their complaint.⁸ While the desire to keep things simple is noble, this rule means that otherwise correctable mistakes would require the case to be dismissed and to be refiled. For example, a tenant who filed suit against her former landlord for failing to return a security deposit; but named the apartment complex as the defendant, would be required to dismiss her case and refile it

⁸ Proposed ARSCP 6(c)

against the corporate entity that owns the apartment complex. The proposed rule actually requires the plaintiff to dismiss and to refile.⁹

The proposed rules also make an answer optional.¹⁰ Requiring defendants to file an answer in small claims courts likely reduces delays due to surprise, avoids unnecessary appearances by plaintiffs when defendants default, and clarifies issues before the hearing.¹¹ Eliminating answers also creates some obvious problems for plaintiffs.

There are significant due process concerns with requiring a plaintiff to proceed to a hearing (where there are no appellate rights) without knowing what the defendant's position is going to be. While some small claims plaintiffs may be somewhat unsympathetic, the traditional stereotype of a small claims plaintiff is a consumer who believes she or he has been wronged. Making that consumer proceed against the business, without knowing what the business' defense is going to be, is arguably unfair.

III.

THE KEY TO MAKING SMALL CLAIMS CASES MOVE FASTER IS TO PROCESS THEM USING THE SAME TIME TESTED METHODS THAT ARE USED FOR OTHER LAWSUITS

⁹ *Id.*

¹⁰ "A defendant may file an answer, but is not required to do so." Proposed ARSCP 9.

¹¹ Special Project: *Judicial Reform at the Lowest Level: A Model Statute for Small Claims Courts*, 28 Vand. L. Rev. 711, 760 (1975)(Article recommends that Answers be optional).

A primary rationale behind these proposed rules is that small claims cases need to be resolved faster. The report to the Arizona Judicial Council correctly identified one of the current case management problems.

To further complicate matters, while the Arizona Justice Court Rules of Civil Procedure provide a process for dismissing cases that have not had service within 120 days of filing, neither the rules or statutes provide guidance for cases that have had service executed but have no further activity. More specifically, no explicit authority is provided in the Arizona Justice Court Rules of Civil Procedure or the Arizona Revised Statutes to dismiss a case for lack of prosecution after service has been executed.¹²

However, rather than giving justice courts this missing explicit authority, the proposed rules take away some of the authority we currently have.¹³

When a plaintiff has not served the summons and complaint by a specific date, the court should have the authority to send out a notice indicating that the case will be dismissed if it is not served by a deadline. If service has been accomplished; but no answer has been filed by a specific date, the court should have the authority to send out a notice indicating that the case will be dismissed if a request for a default judgment is not filed within 30 days. Those two simple changes would resolve the vast majority of any small claims case processing issues.

¹² Committee on Improving Small Claims Case Processing, *Report and Recommendations of the Committee on Improving Small Claims Case Processing*, Submitted to the Arizona Judicial Council (Dec. 2017).

¹³ The proposed rules eliminate default judgments by motion in small claims cases.

CONCLUSION

Nearly everything courts do is adversely impacted by the passage of time. Cases must be adjudicated promptly because justice that is delayed often results justice being denied. But if the proposed rules are adopted as is, the proposed solution will be worse than the current problem. Any proposed small claims rules should err on the side of giving justice courts additional tools. Instead, the proposed rules take away tools we currently have.

RESPECTFULLY SUBMITTED, this 2th day of March 2018.

/s/ Gerald A. Williams
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